

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

US EPA RECORDS CENTER REGION 5



515591

UNITED STATES OF AMERICA,)
Plaintiff,) Civil No. 4-80-469
and)
STATE OF MINNESOTA, by its)
Attorney General Warren Spannaus,)
its Department of Health, and its)
Pollution Control Agency,)
Plaintiff-Intervenor,)
v.)
REILLY TAR & CHEMICAL CORPORATION,)
HOUSING AND REDEVELOPMENT AUTHORITY)
OF ST. LOUIS PARK; OAK PARK VILLAGE)
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,)
INC.; and PHILLIP'S INVESTMENT CO.,)
Defendants,)
and)
CITY OF ST. LOUIS PARK,)
Plaintiff-Intervenor,)
v.)
REILLY TAR & CHEMICAL CORPORATION,)
Defendant,)
and)
CITY OF HOPKINS,)
Plaintiff-Intervenor,)
v.)
REILLY TAR & CHEMICAL CORPORATION,)
Defendant.)

AMENDED ANSWER OF REILLY
TAR & CHEMICAL CORPORATION
TO AMENDED COMPLAINT IN
INTERVENTION OF THE STATE
OF MINNESOTA

Reilly Tar & Chemical Corporation (hereinafter "Reilly")
for its answer to the amended complaint in intervention herein,
admits and alleges as follows:

1. Admits that paragraph 1 correctly describes the allegations in the amended complaint of the United States and in the State of Minnesota amended complaint in intervention, but denies those allegations except as may be admitted elsewhere in this answer.

2. Admits that this Court has jurisdiction under the provisions of 42 U.S.C. § 9613, if that section may constitutionally be applied in this case, but denies that this Court has jurisdiction over this case under the other provisions of law referred to or under any other provision of law.

3. Admits that venue is proper in this District, provided the Court has jurisdiction over the subject matter of the action.

4. Admits paragraph 4.

5. Admits paragraph 5.

6. Admits paragraph 6.

7. Admits paragraph 7.

8. Reilly incorporates by reference paragraphs 5 through 22 of its answer to the amended complaint of the plaintiff United States of America. Reilly admits that a municipal well located in the City of Hopkins was closed on February 8, 1981 because the City was instructed by the State of Minnesota to close that well, but denies knowledge sufficient to form a belief with respect to the remaining allegations in said paragraph.

9. Admits that the State of Minnesota has expended large sums of money on studies relating to the former Reilly site, but denies that these sums have been reasonably spent and specifically denies that these expenditures and other efforts associated with the site were consistent with the National Contingency Plan.

10. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 10.

11. Admits that activities by the State of Minnesota relating to the former Reilly site have involved considerable expense, but denies that such activities were necessary and denies that there is a serious or potentially disastrous situation resulting from Reilly's operations; denies that Reilly has refused to take any corrective action, rather Reilly has consistently made it clear that it would assist in proposing solutions, but objects to the extensive spending proposals suggested by the State of Minnesota and the Environmental Protection Agency.

12. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

13. Admits paragraph 13.

14. Admits paragraph 14.

15. Denies paragraph 15.

16. Admits paragraph 16.

17. Admits paragraph 17.

18. Denies paragraph 18.

19. Denies paragraph 19.

20. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

21. Denies paragraph 21.

22. Denies paragraph 22.

23. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

24. Denies paragraph 24.

25. Denies paragraph 25.

26. Denies paragraph 26.

27. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

28. Denies paragraph 28.

29. Denies the allegations in the first sentence of paragraph 29; admits that Reilly engaged in its activities for its own pecuniary gain, for the benefit of its employees and stockholders and in order to produce a product necessary to the protection of the environment, as well as the enhancement of the public welfare. Reilly denies that those activities were unduly dangerous.

30. Denies paragraph 30.

31. Reilly realleges and incorporates by reference paragraphs 1 through 11.

32. Denies paragraph 32.

33. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 33.

34. Admits paragraph 34.

35. Admits paragraph 35.
36. Admits paragraph 36.
37. Admits paragraph 37.
38. Admits paragraph 38.
39. Admits paragraph 39.
40. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 40.
41. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 41.
42. Denies paragraph 42.
43. Admits paragraph 43.
44. Denies paragraph 44.
45. Denies paragraph 45.
46. Admits that on or about March 20, 1981 the State sent a letter to Reilly and that on March 27, 1981 Reilly sent a letter to the State of Minnesota, and alleges that both letters speak for themselves.
47. Except as otherwise herein expressly admitted, denies each and every allegation contained in the amended complaint.

FIRST AFFIRMATIVE DEFENSE

48. The claims for relief are barred by the doctrine of laches. The claims set forth in paragraphs 20-33 of the amended complaint, containing allegations relative to nuisance, to violation of State statutes and rules, to strict liability for unduly dangerous activities, and to negligence are barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE

49. The complaints giving rise to this action were settled by agreement between the State of Minnesota, the City of St. Louis Park and this defendant by virtue of an Agreement for Purchase of Real Estate executed by the City and this defendant April 14, 1972. The State of Minnesota accepted that settlement at that time and subsequent thereto. Said Agreement is attached hereto as Exhibit A and made a part hereof.

THIRD AFFIRMATIVE DEFENSE

50. The complaints giving rise to this action are not the responsibility of this defendant because of a hold harmless agreement entered into between this defendant and the City of St. Louis Park on June 19, 1973, which provides, in part, that the City will hold this defendant harmless from any and all claims which may be asserted against it by the State of Minnesota and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency. A copy of said agreement is attached as Exhibit B and is made a part hereof.

FOURTH AFFIRMATIVE DEFENSE

51. The liability of the City of St. Louis Park and the non-liability of this defendant to remedy the alleged groundwater contamination problems alleged in the complaint has been fully adjudicated by the Minnesota Pollution Control Agency on behalf of the United States Environmental Protection Agency in an adjudicative administrative proceeding entitled,

"in the Matter of the Application of the City of St. Louis Park for a National Pollutant Discharge Elimination System Permit," file no. 0045489.

FIFTH AFFIRMATIVE DEFENSE

52. Alleges that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Resource Conservation and Recovery Act of 1976, as amended, upon which the plaintiff relies in its Count I and VI violate the Fifth Amendment of the United States Constitution in that application of either or both statutes to the facts of this case would deprive the defendant, Reilly, of its property without due process of law.

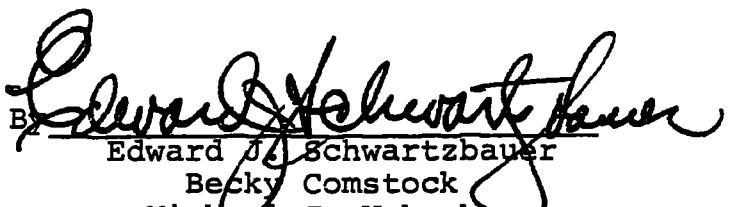
SIXTH AFFIRMATIVE DEFENSE

53. Alleges that the complaint herein fails to state a claim upon which relief may be granted.

WHEREFORE, Reilly Tar & Chemical Corporations prays that this Court enter judgment in its favor granting no relief to the plaintiff but awarding to Reilly Tar & Chemical Corporation its costs and disbursements and such other relief as this Court deems just and appropriate.

DATED: June 29, 1983

DORSEY & WHITNEY

By 
Edward J. Schwartzbauer
Becky Comstock
Michael J. Wahoske
2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2825/2987/8755

Attorneys for Reilly Tar & Chemical Corporation

67-14-72

AGREEMENT FOR
PURCHASE OF REAL ESTATE

This Agreement, made this 14 day of April, 1972,
by and between Racial Tax and Chemical Corporation (hereinafter
"Seller") and the City of St. Louis Park (hereinafter "Buyer").

Seller agrees to sell and Buyer agrees to purchase
the following described property located in the City of St. Louis
Park, Hennepin County, Minnesota, legally described as:

Lots 25 through 40, inclusive, Block 305,
Rearrangement of St. Louis Park

Lot 1, Auditor's Subdivision No. 291

upon the following terms and conditions:

1. Purchase Price; Earnest Money. The purchase price
to be paid by Buyer for the subject property shall be One Million
Nine Hundred Thousand Dollars (\$1,900,000.00). Buyer has paid
Seller \$5,000.00 earnest money, the receipt of which is hereby
acknowledged. The balance of \$1,895,000.00 shall be paid by
Seller to Buyer at closing.
2. Closing. Closing shall be October 2, 1972, at the
offices of Vangie, Vangie & Reissig, Attorneys, 6250 Mayette
Boulevard, Minneapolis, Minnesota.
3. Possession Date. Possession shall be turned over to
Buyer as of the date of closing.
4. Condition of Premises. It is understood that as a
part of the consideration of this purchase that the Buyer is
acquiring said premises in an "as is" condition except for the
provisions in number 5 of this agreement and that this "as is"
condition includes any and all questions of soil and water im-
purities and soil conditions; and that the City agrees to make
no claim against the Seller for damages relative to soil and
water impurities, if any, in any way relating to the premises sold

heir or relative to any other person in which the city of St. Louis holds an interest. This provision shall survive the closing of this transaction.

5. Demolition, Removal, and Clean-up Work.

a) Definitions. For purposes of this section, the following definitions shall be applicable:

- i) Grade (adjacent ground elevation) is the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and a point five feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line of it if it is less than five feet distant from said wall. In case walls are within five feet of a public way, the grade shall be the elevation of the public way.
- ii) Small masonry shall mean brick, stone, concrete, and non-organic materials 1 1/2 cubic feet or less in content and not more than 24" in any dimension and shall not be capable of compression at less than 1500 pounds per square foot that may easily be ascertained as to density by astute judgment factors of both the demolition contractor and the purchaser's engineering personnel.
- b) Work to be Done. Reilly Zinc and Chemical Company shall provide for demolition, removal, and clean-up work on the property as follows:
 - 1) Demolish all buildings, structures, and attachments thereto to surrounding grade. Foundations and floors are to be removed to grade or below.
 - 2) Remove zinc and sulfuric tanks and demolish supporting pads or legs to grade or below grade.

AGGREGATE

3) Remove all railroad rail and ties; signature
With associated docks or other structures to su-
ounding grade or below. Loading dock and tar well
structures are to be removed to the piling level,
other pile caps, if any not included.

4) Remove above grade piping, poles, walls
and miscellaneous structures.

5) Break open tunnels, pits, basements, and
cellars to the extent they are known to the seller
and remove the below-grade piping or machinery
exposed in the work.

6) Fill basements, cellars, pits, tunnels, and
low areas with small masonry and earth materials from
the site.

7) Dispose off the site the demolition materials
and debris not suitable for fill outside of St. Louis
Park.

8) Remove containers and piping residues and
dispose of same at an off-site location outside of
St. Louis Park.

9) Generally level the site to grade and remove
miscellaneous timber, large iron, steel, and remaining
debris from site and dispose of at a location out-
side of St. Louis Park.

10) The site shall be free of all visible demoli-
tion materials, and attachments thereto remaining above
grade. Site finishing shall be accomplished in a
workmanlike manner to rough grade conditions.
This work shall be completed by the seller on or before the
closing date of October 2, 1972.

No species of trees on the premises shall be protected from damage during the removal of structures and equipment.

This paragraph shall not be applicable to that part of the described property lying east of the Eastway right-of-way line of the proposed Louisiana Avenue extension, which right-of-way line is shown in red on Exhibit A hereto. As to the part of the property lying east of the Eastway right-of-way, Buyer hereby accepts it in "as is" condition, and Buyer shall be responsible for all demolition, removal, and cleanup work thereon.

6. Real Estate Taxes: Special Assessments. It is also agreed that at or prior to closing the Seller will pay real estate taxes due and payable in 1972 and all special assessments against the subject premises which have been levied prior to January 1, 1972, including the assessment for storm sewer, for which an appeal is now pending, Hennepin County District Court File No. 678562 and will then dismiss said appeal.

7. Seller's Warranty of Title. Subject to performance by the buyer the seller agrees to execute and deliver a warranty Deed conveying marketable title to said premises subject only to the following exceptions:

- 2) Building and zoning laws, ordinances, State and Federal regulations;
- b) Restrictions relating to use or improvement of premises without effective franchise provision;
- c) Reservation of any minerals or mineral rights to the state of Minnesota;
- d) Utility and drainage easements which do not interfere with present improvements.

8. Delivery of Abstract of Title: Marketability of Title.

The seller shall, within a reasonable time after approval of this

- Agree at, enth an abstract of title, or notarized property
bankruptcies, and state and Federal judgments and liens. The
Buyer shall be allowed 20 days after receipt thereof to examine
title and the making of any objections thereto, said
objection to be made in writing or deemed to be waived. If
any objections are so made the Seller shall be allowed 100 days
to make such title marketable. Pending correction of title, the
payments hereunder required shall be postponed, but upon correction
of title and within 10 days after written notice to the Buyer,
or upon closing date, whichever date is later, the parties shall
pay down this agreement according to its terms. If said title
is not marketable and is not made so within 180 days from the date
of written objections thereto as above provided, this agreement
shall, at Buyer's option, be null and void.
9. Court litigation. It is understood that this agreement
represents a means of settling the issues involved in State
of Minnesota, by the Minnesota Pollution Control Agency and the
City of St. Louis Park, Plaintiffs, vs. Reilly Zinc & Chemical
Corporation, Defendant, Hennepin County Minnesota District Court
Civil File No. 670767. It is understood that the City of St.
Louis Park will deliver dismissals with prejudice and without
cost to defendant executed by itself and by the Plaintiff State
of Minnesota at closing. Defendant Reilly Zinc & Chemical Cor-
poration will deliver a dismissal of its counterclaim with prejudice
and without cost to plaintiffs.
10. Equipment to remain on premises. Seller agrees to
identify all wells and leave them intact. The Seller may, at
its option, remove the pumping equipment. Seller agrees to leave
water main intact and in an operable condition.
11. Continued use of premises. Between the date of the
purchase agreement and the date of closing, the company may use

the premises ~~for~~ manufacturing the industrial purposes and shall continue all existing pollution abatement procedures that are now in place and installed. The company shall cease all business operation not later than October 1, 1972.

12. Moss, Drawings and Information Concerning the Property. Upon acceptance of this offer to purchase, Seller shall furnish buyer with copies of all maps, drawings, and other data and information it may possess concerning the subject property.

13. Damages for Delay or Closing. In the event this sale is not closed on or before December 15, 1972, and in the event the purchaser, and any assignee of the purchaser, has not abandoned any right, title and interest in the premises by that date, then as additional damages, the purchaser agrees to pay the Seller an amount equal to the real estate taxes and assessments due and payable on the premises, which are payable in the year 1973, and said payment shall be due by May 1, 1973, and this provision for payment of damages, shall be deemed a payment of part of the earnest money and shall survive any cancellation of the purchase agreement.

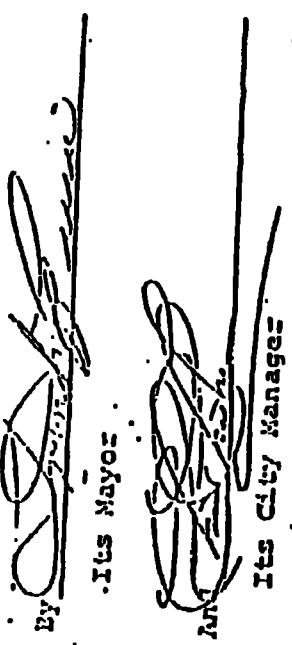
14. Assignment of Seller's Rights. It is agreed and understood that the City of St. Louis Park is executing this agreement on behalf of the Housing and Redevelopment Authority of St. Louis Park. The City of St. Louis Park may assign its rights hereunder to the Housing and Redevelopment Authority of St. Louis Park, or to any other party without the consent of Seller. Any such assignment shall not relieve the City of its obligations hereunder.

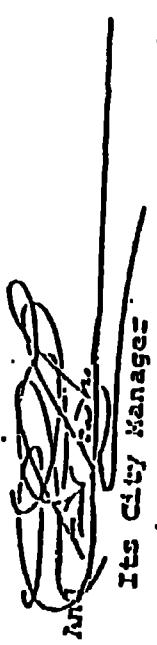
REILLY MFG. COMPANY CORPORATION

By John J. Reilly
Its President
And Richard J. Reilly
Its Vice President

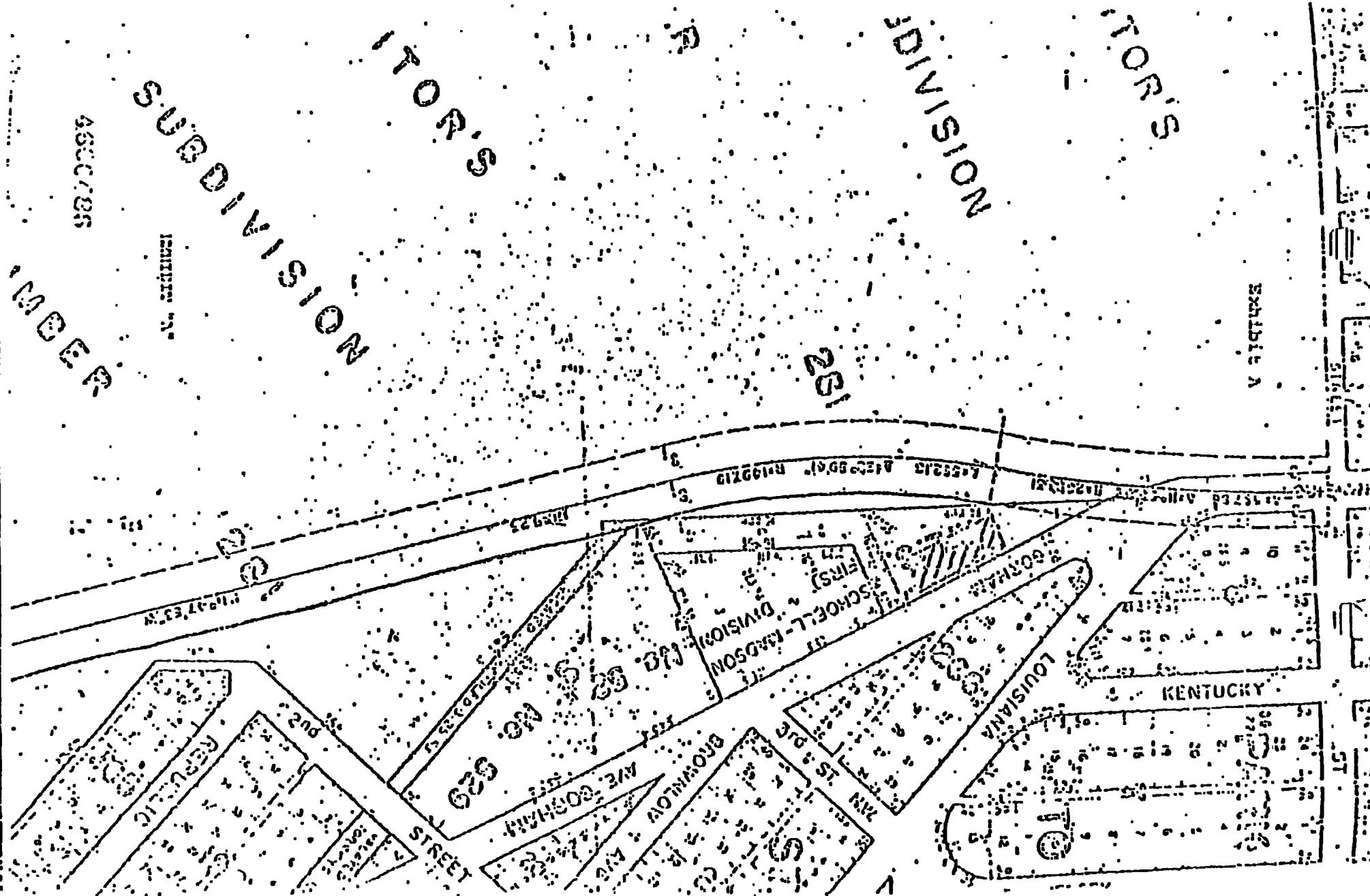
AGREE: Reilly

CITY OF ST. LOUIS PARK


By
Its Mayor


Its City Manager

4656685



HOLD HANDBERG AGREEMENT

THIS AGREEMENT, entered into this 17 day of June, 1973 by and between the City of St. Louis Park and Reilly Tax and Chemical Corporation.

Whereas, on April 14, 1972 the City of St. Louis Park (hereafter "City") and Reilly Tax and Chemical Corporation (hereafter "Reilly") entered into an agreement in which the City agreed to acquire Reilly's property in St. Louis Park;

Whereas, the acquisition of this property by the City was intended as a means of settlement of the issues involved in the State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tax and Chemical Corporation, Defendant, manganese County District Court Civil File No. 670767.

Whereas, the City agreed in the Agreement of April 14, 1972 that it would deliver dismissal of the above noted action with prejudice and without costs to defendant executed by itself and by the Plaintiff State of Minnesota in closing:

Whereas, the Plaintiff State of Minnesota has refused at this time to deliver a dismissal of its complaint; Whereas, the City, and Reilly desire to close the real estate sale and purchase in the manner contemplated in the Agreement of April 14, 1972;

Therefore, it is agreed

1. Dismissal of Action by City
The City will dismiss the action, innocent as and damage is claimed by the City with prejudice and without costs to Reilly.
2. Dismissal of Counterclaim by Reilly
Reilly will dismiss its counterclaim against the City with prejudice and without costs to the City.

3. City to Hold Reilly Harmless

The City hereby agrees to hold Reilly harmless from any and all claims which may be asserted against it by the State of Minnesota, acting by and through the Minnesota Pollution Control Agency, and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency.

4. Hold Harmless Agreement Supplementary

The Hold Harmless Agreement in Number 3 hereof is intended to be supplementary to the Agreement between the City and Reilly relative to Carl Zalandor & Sons, and to Paragraph 4 of the Agreement of April 14, 1972 between the City and Reilly for the purchase of real estate.

5. City and Reilly to Proceed to Closing

Reilly and the City will proceed to the closing of the real estate transaction contemplated by the Agreement between the parties of April 14, 1972, as amended by the Contract for Deed of October 12, 1972.

Reilly Tar and Chemical Corporation

By T. J. Reilly
Its Vice President

And _____
Its _____

City of St. Louis Park

By John D. Johnson
Its Mayor
And John D. Johnson
Its City Manager